No. 14762

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

IN THE MATTER OF THE APPLICATION OF BEN WASSERMAN FOR ADMISSION TO THE BAR OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, BEN WASSERMAN,

Appellant.

BRIEF FOR APPELLANT.

BERTRAM S. HARRIS,
8221 West Third Street,
Los Angeles 48, California,
Attorney for Appellant.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

In the Matter of the Application of Ben Wasserman for Admission to the Bar of the United States District Court, Southern District of California, Ben Wasserman,

Appellant.

BRIEF FOR APPELLANT.

This is an appeal from a final order, and the whole of said order, whereby the Honorable Leon R. Yankwich, Judge of the United States District Court, Southern District of California, denied admission to the Bar of said Court to Ben Wasserman, appellant herein, a member in good standing of the Bar of this Court, the Bar of the State of Arkansas and the Bar of the United States District Court for the Eastern District of Arkansas, on the following grounds:

(1) That the applicant for admission, Ben Wasserman, is not a member of the State Bar of California, and therefore is not eligible for admission to the Bar of the United States District Court, Southern District of California, under the Rules of said Court; and

(2) That the said applicant is not otherwise entitled under the constitution or laws of the United States to become a member of the Bar of the said Court [R. 9, 10].

Jurisdictional Statement.

Jurisdiction of this cause in the United States District Court, Southern District of California, is alleged to be conferred by virtue of Rule 1, of the Rules of the said Court. Jurisdiction of this Court is alleged to be conferred by virtue of 28 U. S. C. 1292, and on authority of *Application of Fink,* 208 F. 2d 898, and *In re Summers,* 325 U. S. 561, 65 S. Ct. 1307, 89 L. Ed. 1795.

Statement of the Case.

Ben Wasserman, appellant herein, is a member of the Bar in good standing of the Bar of Arkansas, the Bar of the United States District Court, Eastern District of Arkansas and the Bar of the United States Court of Appeals for the Ninth Circuit. Bertram S. Harris, a member of the Bar, in good standing, of the United States District Court, Southern District of California, moved the admission of Ben Wasserman, appellant herein, to the Bar of the said Court [R. 3, 4, 5, 6]. In connection therewith, appellant herein filed his affidavit in support of said motion [R. 6, 7]. No opposition was filed to said motion and affidavit, and no parties intervened in the proceedings. The Court denied said motion and application for admission [R. 10]. On April 22, 1955, Notice of Appeal was duly filed [R. 11].

Questions Presented by This Appeal.

(1) Can the United States District Court for the Southern District of California arbitrarily limit admission to its Bar exclusively to members of the Bar of the State of California although members of the Bar in other jurisdictions are equally qualified to practice the profession?

(2) Can the United States District Court for the Southern District of California enter into a private agreement with the State Bar of California, that: only members of the State Bar of California shall be admitted to the Bar of the United States District Court for the Southern District of California?

(3) Are all members of the Bar of the United States Court of Appeals for the Ninth Circuit automatically members of the Bar of each and every United States District Court within its jurisdiction and over whom it exercises appellate jurisdiction?

(4) All District Courts of the United States are a creation of the United States Constitution and Act of Congress having concurrent jurisdiction except for venue and is actually one Court subject to supervisory and appellate jurisdiction of the Supreme Court of the United States. The question presented is:

Is admission to the Bar of the United States District Court in one jurisdiction admission to the Bar in all jurisdictions?

(5) Once admitted to practice before the Bar of any United States District Court, and still in good standing, does such attorney need to be admitted specially to practice before the United States District Court in another jurisdiction?

(6) Once admitted to practice before the Bar of any United States District Court, and still in good standing, can such attorney be refused the right to institute proceedings in behalf of his clients or defend a civil or criminal action in behalf of his client whether he is a resident or non-resident within the jurisdiction of a United States District Court having jurisdiction of the issues, and not

having been previously admitted to the Bar of said Court where the venue is laid?

(7) The Rules of Court for the United States District Court, Southern District of California, provide: (a) that an attorney in good standing before any United States District Court, if he is a resident of the Southern District of California, cannot under any condition, appear as an attorney in said court unless he has first been admitted to its Bar; and (b) that the said Court will admit to its Bar only those persons who are first admitted to the Bar of the State of California. The questions presented are:

(a) By refusing appellant herein the right to appear as attorney under any conditions has he been placed in a class different than other attorneys?

(b) By refusing appellant herein admission to the Bar of its Court has said appellant been placed in a class different than other attorneys?

(8) The Rules of Court of the United States District Court for the Southern District of California permit all United States Attorneys and their deputies to appear in its Court without prior admission, in behalf of the United States, even though such attorneys are admitted only to the jurisdictions that appellant has been admitted. The questions presented are:

(a) Can the said Court select the litigant for whom an attorney, not admitted to its Bar, may appear in its behalf?

(b) Can attorneys, not admitted to its Bar, appear for certain clients and be preemptorily denied such right to appear for other clients?

(c) Does this place appellant herein in a class different than other attorneys?

(d) Can the said Court deny to attorneys for others, those privileges extended to attorneys for the United States Government?

(9) In preempting admission to the Bar of its Court to members of the Bar of the State of California, does this amount to class legislation placing appellant herein in a class different than other attorneys?

(10) Does the said Rule of Court affect the substantial rights of appellant herein, in that the same is arbitrary and capricious?

(11) Does the said Rule of Court affect the substantial rights of appellant herein, in that it is in contravention of Article I, Sections 8.9 and 10, Article III, Sections 1 and 2.2, Article IV, Sections 1 and 2.1, Article VI, Section 2, and Amendments V and XIV, of the Constitution of the United States of America?

Specification of Errors.

I.

That the United States District Court for the Southern District of California, is a separate and independent court maintaining its own roll of attorneys; it is not subject to appellate or supervisory jurisdiction of any court of the State of California, the State Bar of California, or any administrative agency of the State of California; and therefore cannot limit admission to its bar to members of the Bar of the State of California; and cannot enter into any agreement with any branch of government or administration agency to limit admission to the Bar of the United States District Court to only members of the Bar of the State of California.

II.

That the United States District Court for the Southern District of California, is an inferior court created by Congress, directly under, and subject to the appellate and supervisory jurisdiction of the United States Court of Appeals for the Ninth Circuit; and therefore, all members of the bar admitted to practice law before the United States Court of Appeals for the Ninth Circuit, are automatically members of the Bar of the United States District Court for the Southern District of California, and may appear, participate in any and all proceedings and otherwise represent clients as an attorney, advocate, proctor, solicitor and counselor of said court, with all of the rights and privileges appertaining thereto.

III.

Any person admitted to practice as an attorney before any District Court of the United States, and who is a member of the bar of said court in good standing, is automatically qualified to practice his profession, whenever

he chooses, before the United States District Court for the Southern District of California; and upon motion duly made, the applicant shall be admitted, sign the roll of attorneys, and receive a certificate of his admission to practice.

IV.

That the several United States District Courts throughout the United States of America, have concurrent jurisdiction to admit attorneys to practice in its courts, and admission to practice in one jurisdiction is admission to practice in all jurisdictions; that the several courts have only jurisdiction to supervise said attorneys appearing before them or practicing in said court, and to further require that said attorney sign the roll of attorneys of the local court wherein he is appearing.

V.

Rule 1(b), of the United States District Court for the Southern District of California, limits admission to its bar, exclusively, only active members of the Bar of the State of California and excludes all others, regardless of whether such attorney is of good moral character and otherwise possesses the qualification of being a member of the bar in good standing, regardless of the jurisdiction wherein he is enrolled. Appellant therefore charges, that he has been put in a class different than members of the Bar of the State of California, and further charges:

(A) That the rules of court of the Uinted States District Court for the Southern District of California amounts to class legislation, preempting its role of attorneys to members of the Bar of the State of California;

(B) That the said rule of court is arbitrary and capricious;

(C) That the said rule of court affects the substantial rights of appellant herein, in that it is in contravention of Article I, Sections 8.9 and 10, of the Constitution of the United States of America;

(D) That the said rule of court, affects the substantial rights of appellant herein, in that it is in contravention of Article III, Sections 1 and 2.2, of the Constitution of the United States of America;

(E) That the said rule of court affects the substantial rights of appellant herein, in that it is in contravention of Article IV, Sections 1 and 2.1, of the Constitution of the United States of America;

(F) That the said rule of court affects the substantial rights of appellant herein, in that it is in contravention of Article VI, Section 2, of the Constitution of the United States of America;

(G) That the said rule of court affects the substantial rights of appellant herein, in that it is in contravention of Amendment V, to the Constitution of the United States of America;

(H) That the said rule of court affects the substantial rights of appellant herein, in that it is in contravention of Amendment XIV, of the Constitution of the United States of America.

VI.

The United States District Court for the Southern District of California favors the United States of America in that it makes it a special litigant permitting its attorneys, regardless of the jurisdiction in which they have been admitted to practice, although they are not members of the California bar, to appear before it and practice law before it, without limit and without restriction, the same privileges being denied to private litigants.

Summary of the Argument.

1. The United States District Court for the Southern District of California cannot limit admission to its Bar exclusively to members of the Bar of the State of California.

(A) The said Court cannot preempt residents of the Southern District of California, who are not members of the Bar of the State of California, but are members of the Bar of the United States District Court of another jurisdiction, or of a United States Court of Appeals, or of the Supreme Court of the United States, from appearing in behalf of any client in said Court.

(B) All members of the Bar admitted to the United States District Court of another jurisdiction are permitted to practice before the United States District Court for the Southern District of California and need not be specially admitted.

(C) All members of the Bar admitted to the United States District Court for another jurisdiction and in good standing shall be admitted to the Bar of the United States District Court for the Southern District of California upon motion duly made shall be so admitted, sign the roll of attorneys and receive his certificate of admission upon payment of all fees.

(D) All members of the Bar of the Supreme Court of the United States and the United States Court of Appeals for the Ninth Circuit are automatically members of the Bar of the United States District Court for the Southern District of California, need not be specially admitted to said Court and may practice their profession in said Court without any further requirements.

(E) The United States District Court is a separate and independent Court, maintaining its own roll of attorneys, is not subject to appellate or supervisory jurisdiction of any state court or administrative agency and cannot enter into any agreement with any state or administrative agency of said state limiting admission to its Bar exclusively to members of the Bar of said state.

(F) The Rule of Court limiting admission to its Bar exclusively to members of the Bar of one state is arbitrary and capricious, is class legislation and affects the substantial rights of all other lawyers, in contravention of Article I, Sections 8.9 and 10, Article III, Sections 1 and 2.2, Article IV, Sections 1 and 2.1, Article VI, Section 2, and Amendments V and XIV, of the Constitution of the United States of America.

(G) The United States District Court for the Southern District of California, favors the United States of America, in that it makes it a special litigant, by permitting its attorneys, regardless of the jurisdiction in which they have been admitted to practice, although they are not members of the Bar of the State of California, to appear before it and practice law before it, without limit or restriction, the same privileges being denied to private litigants. Private litigants should be in exactly the same position as the United States Government: to retain counsel of their own choosing who shall appear for them, the same as attorneys selected by the United States Government, without limit, reservation or restriction.

ARGUMENT.

I.

The United States District Court for the Southern District of California Cannot Limit Admission to Its Bar Exclusively to Members of the Bar of the State of California.

This argument is consolidated into one so as to include sub-titles and sub-arguments (A), (B), (C), (D), (E), (F), and (G), from the Summary of the Argument, and is to be considered as though fully set forth herein. This is so done in order to avoid repetition, with consideration of convenience to the Court.

This Court will take judicial notice that all of the Federal Courts are separate, independent and apart from the State Courts, each having jurisdiction to set rules for admission to its individual Bars. The Supreme Court of the State of California in *Ex parte McCue,* 211 Cal. 57, 293 Pac. 47, held: That State Statutes regulating the practice of law are inapplicable to Federal Courts. However, in regulating admission to its individual Bar, no Court may set up rules for admission which are discriminatory, arbitrary and capricious. In the case of *Cummings v. Missouri,* 4 Wall. 321, the Court held:

> "The theory upon which our political institutions rest is that all men have certain inalienable rights—that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one, and that in the protection of these rights all are equal before the law."

And in the case of *Bradwell v. Illinois,* 16 Wall. (U. S.) 130, it was held: *That whatever are the privileges and immunities of a citizen in one state he carries them with*

him into every state which he emigrates. In that case it was therein stated:

> "The 14th Amendment executes itself in every state of the Union. Whatever are the privileges and immunities of a citizen in the State of New York, such citizen emigrating carries them with him into any other state of the Union. It utters the will of the United States in every state, and silences every State Constitution, usage or law which conflicts with it. *If to be admitted to the bar, on attaining the age and learning required by law, be one of privilege of a white citizen in the State of New York, it is equally the privilege of a colored citizen in that State;* and if in that state, then in any state. If no state may make or enforce any law to abridge the privileges of a citizen, *it must follow that the privileges of all citizens are the same."* (Italics supplied.)

It is therefore axiomatic, that if a member of the Bar of the State of California may be admitted to practice before the Bar of the United States District Court for the Southern District of California, then a member of the Bar of any State of the United States should be accorded the same consideration, privileges and immunities. *Thus, if being admitted to the Bar of the United States District Court for the Southern District of California be one of privilege of a member of the Bar of the State of California, it is equally the privilege of a member of the Bar of the State of Arkansas or any other State in the Union.* In *Brooks v. Laws,* 208 F. 2d 18, the Court reaffirmed and echoed the postulate of Chief Justice Taney, who long ago held in *Ex parte Secombe,* 19 How. 9, 60 U. S. 9, 15 L. Ed. 565, as follows:

> "It rests exclusively with the Court to determine who is qualified to become one of its officers, as an

> attorney and counselor, and for what cause he ought to be removed. *This rule, he said, was subject to the limitation that the power be not arbitrarily exercised by the lower court."* (Italics supplied.)

And so, in the recent case of *In re Summers,* 325 U. S. 561, 89 L. Ed. 1795, 65 S. Ct. 1307, the Supreme Court of the United States granted certiorari to review the action of the Supreme Court of the State of Illinois when it denied admission to the Bar to Clyde Wilson Summers, the applicant, and stated as follows:

> "Only a decision which violated a federal right secured by the Fourteenth Amendment would authorize our intervention."

Thus, the Court held: *That the responsibility for choice as to personnel of the Illinois Bar rests with Illinois so long as the method of selection does not violate a federal right secured by the Fourteenth Amendment.*

One jurisdiction has no right to sit in judgment on the jurisdiction of another Court in selection of its personnel in admitting members to its bar. The Supreme Court of the United States has expressed the view that they leave to the several states the task of admitting applicants to their respective Bars and rely upon their individual judgment as to training, learning, ability and character. Thus, its Rules for Admission to its Bar are uniform and all lawyers of every state are treated similarly. The United States District Court for the Southern District of California is in no position to state that only California lawyers are capable, able of good moral character and possess the requisite qualifications of learning and ability. To arbitrarily disqualify all lawyers except California lawyers, is to say that no other state except California can produce lawyers qualified to practice in the Federal Courts.

Assuming the State of California were to have a rule that before an applicant for admission to its Bar must first be a member of the Bar of the State of New York, it is plain to see that this law would be stricken down immediately. In the case of *In re Day,* 181 Ill. 73, the Court held:

> "The right to practice law is a privilege, and a license for that purpose makes the holder an officer of the Court, and confers upon him the right to appear for litigants, to argue causes and to collect fees therefor, and creates certain exemptions, such as from jury service and arrest on civil process while attending Court. The law conferring such privileges must be general in its operation. No doubt the legislature, in framing an enactment for that purpose, may classify persons so long as the law establishing classes is general and has some reasonable relation to the end sought. There must be some difference which furnishes a reasonable basis for different legislation as to the different classes, and not a purely arbitrary one, having no just relation to the subject of the legislation. (Braceville Coal Co. v. People, 147 Ill. 66; Ritchie v. People, 155 Idaho 98; Gulf, Colorado and Santa Fe Railroad Co. v. Ellis, 165 U. S. 150.) The length of time a physician has practiced and the skill acquired by experience may furnish a basis for classification (Williams v. People, 121 Ill. 84), *but the place where such physician has resided and practiced his profession cannot furnish such basis and is an arbitrary discrimination making an enactment based upon it void.* (State v. Pennoyer, 65 N. H. 113.) Here, the legislature undertakes to say what shall serve as a test of fitness for the profession of law, *and, plainly, any classification must have some reference to learning, character or ability to engage in such practice."* (Italics supplied.)

In denying appellant's application for admission to the Bar of its Court, the learned judge alluded to the reasons leading to the creation of the Court Rules in denying admission to its Bar to all attorneys, except those first admitted to the State Bar of California. These reasons are not sound and merely consists of rationalization for the rules rather than setting up a program for admission which would be uniform as to all lawyers of all jurisdictions. And, even if they were good reasons to be relied upon, it could almost, and in a sense, falls within the maxim of: *"When the reason for the law fails, the law itself fails."* If this then be true, the law, if for no other reason, must be caused to fall.

For example the Court stated [R. 13]:

> "From time immemorial it has been the recognized principle for the District Courts of the United States to have the right to determine the conditions upon which a person should be admitted to practice."

Appellant cannot agree with this general statement. This could be true, assuming one had never been admitted to practice before, in any jurisdiction whatever. But once a person has been admitted to practice in another jurisdiction the rules for admission to its Bar must be general and not special. And, even assuming *arguendo,* that the Court's postulate could be correct, it cannot arbitrarily discriminate against certain lawyers because of their former residence or place of practice. The right to regulate admission to the Bar does not give carte blanche authority to deny one's constitutional privileges and immunities or to deny equal protection of the law.

One objection in the main, raised by the Court, was that separating the Federal Court Bar in Southern California from the State Bar of the State of California,

would create a dual Bar membership. The argument advanced in favor of a single Bar, the State Bar of California, is that all members of the State Bar of California are subject to investigation before they are admitted and subject to examination to test their learning and ability. This is specious reasoning. First, another jurisdiction has already inquired into the character, learning and ability of the applicant seeking admission, and if this reliance is good enough for the Supreme Court of the United States, it should be good enough for a Court inferior to it. Moreover, there is nothing to stop the Court from setting up its own investigating body to determine the character, learning and ability of the applicant seeking admission. Then too, no matter how hard it tried the Court cannot get away from a dual bar membership. The very fact that admission is required to practice before it automatically creates a dual Bar. Otherwise, the Court would have a rule stating that members of the State Bar of California need not be admitted once they have been admitted to the State Bar of California. But the Supreme Court of the State of California in *Ex parte McCue, supra,* has stated that the State statutes regulating the practice of law are inapplicable to Federal Courts. Moreover, separate proceedings for disbarment are necessary in the Federal Courts when one has been disbarred in a State Court.

The argument of discipline is further specious. There are other Federal Court jurisdictions that have set up grievance committees for the disciplining of lawyers practicing in the Federal Courts. We have a good example of this in the very Court in which the application of appellant has been denied. The Honorable Judge Mathes summoned an attorney Maurice Levine, for conduct unbecoming an attorney and ordered his disbarment without first referring the matter to the State Bar of California.

This Court reversed the disbarment order. The Supreme Court of the United States has on its role of attorneys, members of the Bar of every State in the Union, yet it has no difficulty in entering an order to show cause why an attorney should not be disciplined for conduct unbecoming an attorney. Moreover, what is to prevent the Los Angeles Bar Association or the United States Attorney from instituting disciplinary proceedings against a lawyer for misconduct. He would be within their jurisdiction. For example, in the case of *Sacher v. Association of the Bar of the City of New York,* 347 U. S. 388, 74 S. Ct. 569, The Association of the Bar of the City of New York and the New York County Lawyers Association commenced the disciplinary proceedings in the United States District Court in which the lawyer was admitted to practice.

In the instant case, the Court further touched upon the point of learning and ability. Appellant does not believe, that this Court can, with complete candor, state and actually believe, that lawyers like Charles Evans Hughes, Justice Brandies, Justice Cardozo, Oliver Wendell Holmes, would not possess the ability to practice law in the United States District Court for the Southern District of California as against a young man of 21 years of age just admitted to practice law in the State of California. Take for example any lawyer of many years practice only in the Federal Courts has less ability than a lawyer newly admitted to practice in the State of California. Assuming also, that a lawyer having practiced nothing but Bankruptcy Law, or Admiralty Law, or Tax Law, or Federal Criminal Law all of his life and wishes to continue such practice in the Southern District of California, why should he be penalized by forcing him to be admitted to a State Court? Assuming he doesn't wish to be admitted to the

State Court, why should he be denied the right to practice his profession merely because he crossed a State line? Why should such a lawyer be denied the right to practice law merely because, some day, he may decide to take a case involving diversity of citizenship? Courts know that when one is trained in the law he knows where to find the answer to the questions. If this argument of the Court in the instant case is to hold true, then, in effect the United States District Court for the Southern District of California is saying to the United States Court of Appeals for the Ninth Circuit and to the Supreme Court of the United States, that only those judges admitted to the Bar of the State of California are capable of reviewing and reversing judgments entered in the United States District Court for the Southern District of California.

Actually and practically the Federal Courts should not be so agreeable to graciously hand a novice attorney the gift to practice law in its courts. There should be a complete separate independent Bar for those who do not care to practice in State Courts, just the same as a lawyer from California who doesn't care to practice law in any other jurisdiction. There should be a separate, independent Federal Bar, with rigid requirements for admission. High standards should be set, just the same as the several states set their own standards. The reasons for this are obvious. Handing a new lawyer freshly admitted to a State Bar a license to practice law in the Federal Courts is exactly the same as handing a new law student a license to practice in the State Courts.

The new lawyer freshly admitted to the State Bar is completely incapable of conducting a Federal Practice. *He is wholly unfamiliar with the Federal Rules of Civil and Criminal Procedure and more unfamiliar with Federal*

Substantive law. His only claim to the right, is that occasionally, he may get a case which involves state law; and this is so far and in between. But the Federal substantive and procedural law is as different and even more so than the laws of the different states. Tested by the same standards of examination as is given for admission to a state bar applicant, 99% of the lawyers would fail such an examination even if only 50% passing grade was required. The Federal law, substantive and procedural, is far more complicated than state law. *Yet, the Court would deny admission to a well trained and experienced lawyer of Federal practice merely because of his place of residence.* And, the judges of the Federal Courts, if the question were put direct to them, would readily admit that the average State lawyer, who only occasionally appears in the Federal Courts, is completely lost and inexperienced. Ask any State lawyer practicing law in the State of California to explain Rule 26, of the Federal Rules of Civil Procedure, which is elementary and simple enough, and very few will give you the correct answer.

As lawyers, we should be frank to admit, that the question is not one of character, learning and ability, but rather one of economics and jealousy. We of the legal profession ought to be above such things. The ethics of the profession demand it and our duty to the public requires it. In the case of *H. P. Hood v. Du Mond,* 336 U. S. 525, 69 S. Ct. 657, 664, 665, the Supreme Court of the United States held that if it were just a question of economics the law must be defeated and reversed on that ground. The court there held that one may engage in his business in any state and cannot be denied the license to so engage merely on the question of competition.

The Court was frank to admit the following [R. p. 16]:

> "There is one exception that we make, and that is merely because the law so provides. A person who is an attorney for a governmental agency has the right to appear in our court, even though he not be a member of the local State Bar. For instance, we have had men in the Lands Division and men in the Anti-trust Division who have appeared before our courts, but that is merely because the law so recognizes. Furthermore, they recognize government attorneys to such an extent that even in the rules relating to criminal procedure provision is made that a government attorney may appear before the grand jury, *and a government attorney need not necessarily be a member of the Bar of the State.*" (Italics supplied.)

Why then, cannot a private litigant choose his own counsel the same as the government does? Why is the United States Government, as a litigant, accorded the privilege of selecting a lawyer, not a member of the State Bar of California, to appear in the United States District Court for the Southern District of California, *whereas a private litigant is denied this privilege?* If, as the Court says, this is the law, then all litigants should be treated equally before the law. This Court, in the case of *United States of America v. Amos R. Morin* (No. 14627), stated:

> "Suppose the Standard Oil Company of California should move for an extension of time on the same grounds, namely, that for many years it had retained a number of attorneys too small for the proper conduct of its litigation, and they had been too busy in other matters for their client to care for a case in the Court of Appeals? *To drop into the vernacular, it is likely that the members of the Bar would indulge in*

course laughter, knowing as they do that the United States is not a favored litigant in this court." (Italics supplied.)

The Rule of Court, pertaining to attorneys (1), clearly prohibits a local resident, a member of the Bar in good standing in another jurisdiction, from appearing in isolated cases in association with a local attorney. No leave *ex gratia* whatever is permitted. *But if he lived in another jurisdiction, leave ex gratia or appearance pro hoc vice would be permitted.* This punishes a lawyer for moving into a better climate. He may have to move for health reasons, but the rules of the United States District Court for the Southern District of California insist on making him sicker. Why should a lawyer be punished and penalized because he resides in one state and practices law in another? Why should a lawyer be forced to seek admission to one Bar in wishing to practice his profession in a completely other jurisdiction where he is wholly and completely qualified?

The Court, in denying admission to appellant herein, has affected the substantial rights of said appellant in contravention of Article I, Sections 8.9 and 10; Article III, Sections 1 and 2.2, Article IV, Sections 1 and 2.1, Article VI, Section 2, and Amendments V and XIV, of the Constitution of the United States of America.

Yet another paradoxical situation comes to the fore in the instant case before the Bar. Appellant is admitted to practice before the United States Court of Appeals for the Ninth Circuit, the said Court having appellate and supervisory jurisdiction of the United States District Court, Southern District of California. How can it be said that a lawyer has the right to appear in behalf of

a client, write briefs and argue the cause on an appeal, arising out of a judgment entered by the lower court, *and yet be denied the right to participate in the proceedings in the court below so as to protect the record?* The situation appears to be untenable, inconsistent and paradoxical. Suppose a lawyer was admitted to the Supreme Court of the State of California, but was not permitted to appear in the Superior Court, or Municipal Court of Los Angeles County, he would be in a rather awkward position. He has the right to appear before the highest court of a State but is denied the right to appear before the most inferior Court.

Certainly the history of the legal profession, and it is now universal, and is true in every State of the Union, that once a lawyer is admitted to practice in the highest Court of a State, he need not be specially admitted to the Bar of each Court within the State. He is automatically permitted to appear before any inferior Court of the State. The highest appellate jurisdiction of the Federal Court System is the Supreme Court of the United States; the immediate appellate and supervisory Court of the United States District Court, Southern District of California, is the United States Court of Appeals for the Ninth Circuit. Manifestly then, it should be axiomatic, that one admitted to practice before the Supreme Court of the United States shall automatically be permitted to practice before any Federal Court or administrative agency in the United States; and those lawyers admitted to any United States Court of Appeals shall be automatically permitted to appear before any Federal Court or Administrative Agency within its Appellate and Supervisory Jurisdiction.

Conclusion.

Appellant submits that the Court below erred in denying him admission to the Bar of the United States District Court for the Southern District of California. Appellant prays that the Court below be reversed with the direction and order to admit Ben Wasserman to the Bar of its Court.

Respectfully submitted,

BERTRAM S. HARRIS,

Attorney for Appellant.